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Supreme Court, U.S.
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No. 98-534

In The

Supreme Court of the United States

October Term, 1998

PATRICK BRADY and SHAWN MURPHY,

Petitioners,

v.

STEVERSON DAVIS,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

OBJECTION TO MOTIONS TO FILE AMICUS CURIAE BRIEFS

MICHAEL J. KELLY
804 Mott Foundation Bldg.
Flint, Michigan 48502
(810) 235-4100
Counsel of Record

GEORGE R. HAMO
Old Elks Building
142 West Second Street
Suite 101
Flint, Michigan 48502
(810) 234-3666
Co-Counsel

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OBJECTION TO MOTIONS TO FILE AMICUS CURIAE BRIEFS

The Michigan Municipal League ("MML") and the Michigan Municipal Risk Management Authority ("MMRM") have filed motions for leave to file amicus curiae briefs in support of the Petition for a writ of certiorari. Respondent Steverson Davis did not consent to the filing of such briefs, and objects to the motions, because MML and MMRM argue their positions using facts contrary to the facts of this case and seek to present hypothetical issues to this Court which are not fairly presented by the facts. Accordingly, the motions of MML and MMRM to file amicus briefs should be denied. *See* Sup. Ct. R. 37.5.

MML and MMRM have simply ignored both the facts and the holding announced by the court of appeals in this case, for it is clear that Petitioners' duty to Davis is predicated on actions they took while they had Davis in custody. (*See* Opinion, App. 3a-4a, 7a.) Significantly, neither motion cites facts or discussions of law in the circuit court opinion which remotely suggest that this case actually involves the issues, facts or rules of law that are discussed in the MML and MMRM submissions.

The motions of MML and MMRM are based on the erroneous supposition that this case involves duties of police officers to "intoxicated, homeless individuals *after* they are released from police custody to their own personal recognizance." (MMRM Motion at 1; *see* MML Motion at i.) The MML Motion goes even further, with the wildly unsupported claim that the Court of Appeals opinion "requires all intoxicated persons to be put under

arrest to be kept in continued detention and protective custody until they are sober." (MML Motion at 4.) Both proposed briefs simply ignore the fact that Petitioners greatly increased the danger to Davis, by taking him in handcuffs to a dark, busy highway outside the city limits to " 'teach him a lesson,' " where they deposited him against his will even though they knew he was helpless. (Compare Opinion, App. 7a with MMRM Prop.Br. 6.)

This Court's Rule 37.1 states that amicus briefs are of "considerable help," if they bring "*relevant* matter to the attention of the Court that has not already been brought to its attention by the parties." (Emphasis added.) But the motions of MML and MMRM seek to present a case to this Court that is entirely different from the one actually at bar. Contrary to the statements in the Motions MML and MMRM have filed, this case does not establish a new rule imposing duties upon police officers that arise *after* a suspect is released from custody. Instead, the court of appeals relied on well settled precedent for its unremarkable holding that officers who have a suspect in custody must refrain from acting with deliberate indifference to the dangers they impose upon the arrestee. *See DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989); *see also Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976) (Eighth Amendment requires the State to provide adequate medical care to incarcerated prisoners); *Youngberg v. Romeo*, 457 U.S. 307, 315-16 (1982) (substantive due process requires the State to provide involuntarily committed mental patients services necessary to ensure their "reasonable safety" from themselves and others.); *City of Revere*, 463 U.S. at 244 (Due Process Clause requires the

responsible government or governmental agency to provide medical care to suspects in police custody who have been injured while being apprehended by the police).

This case is not about decisions that officers must make before they decide to arrest, nor does it concern discretionary actions officers may take when a jail is overcrowded. (*See* MMRM Prop. Br. at 6-7; MML Prop. Br. at 14-15; cf. Opinion, App. 7a, 10a-11a.) Thus, the Motions do not raise relevant matters with their parade of horribles based on the supposed dilemma facing police officers who must make decisions in "potentially dangerous situations." (MMRM Prop. Br. at 6-8; MML Prop. Br. at 16-17). Instead, as the court of appeals held, this case turns on the narrow issue of an officer's duty to refrain from placing a custodial suspect in harm's way, and then purposefully leaving him there with deliberate indifference to his plight. (Opinion, App. 10a – 12a.)

It is possible that MML and MMRM were misled by the erroneous Questions Presented and argument in the Petition, for although they seek review of the denial of their summary judgment motions, Petitioners have based their entire submission before this Court on their version of the case. It is Petitioners' contention that after arresting Davis, they released him "at another location" because the jail was overcrowded and Davis had said he would destroy more property at the scene where he was arrested. (*See* Pet. i-ii, 3-5, 16-17.) The motions of MML and MMRM rely on these contentions as well. (*See* MML Prop. Br. at 4-5, 7-8, 9, 10-11, 14-15; MMRM Prop. Br. at 4-5, 7-8, 10-11, 12-13, 15-16.) But the arguments based on these suppositions are simply irrelevant here, for as the court of appeals pointed out, the record supports Davis's

complaint that after Petitioners took him into custody, they drove him against his will to a dark, busy highway outside the city limits, where they removed his handcuffs and released him to "teach him a lesson," although they knew he was so intoxicated that he could not stand up. (Opinion, App. 3a-4a, 7a.) Fed. R. Civ. P. 56(c) requires that the facts be viewed in the light most favorable to Davis, the non-moving party in the summary judgment proceedings. (*See* Opinion at 7a, 10a.; *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).) Thus, the facts in the case before this Court are wholly inconsistent with the recitations in the Motions and proposed briefs of MML and MMRM.

CONCLUSION

For the reasons stated above and in the Brief in Opposition, the Motions of MML and MMRM to file briefs as amicus curiae are not well taken and should be denied.

Respectfully submitted.

MICHAEL KELLY
804 Mott Foundation Bldg.
Flint, Michigan 48502
(810) 235-4100

Counsel of Record

GEORGE R. HAMO
Old Elks Building
142 West Second Street
Suite 101
Flint, Michigan 48502
(810) 234-3666
Co-counsel

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